

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: ALEXIA FOODS, INC.
LITIGATION

Case Number: 4:11-cv-06119-PJH
CLASS ACTION

**~~AMENDED [PROPOSED]~~ ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 10, 2013
Time: 9:00 a.m.
Courtroom: Courtroom 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

1 Plaintiffs Leandro Vicuña (“Vicuna”), Pere Kyle (“Kyle”), and David Eckstein
 2 (“Eckstein,” collectively “Plaintiffs”), having filed a motion for an order preliminarily
 3 approving the settlement reflected in the Stipulation of Settlement (“Agreement”) entered
 4 into by Plaintiffs and Defendant ConAgra Foods, Inc. (“ConAgra” or “Defendant”); that
 5 said motion having come on for a hearing before the above-entitled Court; the Court
 6 having reviewed and considered all documents, evidence and arguments of counsel
 7 presented in support of said motion; the Court being fully advised of the premises and
 8 good cause appearing therefore, the Court enters its order and, subject to final
 9 determination by the Court as to the fairness, reasonableness and adequacy of the
 10 settlement, finds and orders as follows:

11 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

12 1. For settlement purposes only, pursuant to Federal Rule of Civil Procedure
 13 23, the Court hereby conditionally certifies the following class (“Settlement Class”)¹:
 14 “All residents of the United States of America who, at any time between December 6,
 15 2007, and July 10, 2013, purchased any of the referenced Alexia Products (i.e. “Sauté
 16 Reds,” “Mashed Potatoes Yukon Gold Potatoes & Sea Salt,” “Mashed Potatoes Red
 17 Potatoes with Garlic & Parmesan,” “Waffle Fries,” “Harvest Sauté,” “Italian Sauté,”
 18 “Sauté Sweets,” and “Potato Bites”).” Excluded from this definition are (a) ConAgra, (b)
 19 all of ConAgra’s past and present respective parents, subsidiaries, divisions, affiliates,
 20 persons and entities directly or indirectly under its or their control in the past or in the
 21 present, (c) ConAgra’s respective assignors, predecessors, successors and assigns; and
 22 the past or present partners, shareholders, managers, members, directors, officers,
 23 employees, agents, attorneys, insurers, accountants, (d) representatives of any and all of
 24 the foregoing, and (e) any government entities.

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 27 ¹ Subject to the exclusions set forth in Section 5.3 of the Agreement.

1 2. The Court conditionally certifies the proposed Settlement Class, and finds
2 that the requirements of Fed. R. Civ. P. 23(a) are satisfied, for settlement purposes only,
3 as follows:

- 4 a. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class
5 are so numerous that joinder of all members is impracticable.
- 6 b. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines
7 that there are common issues of law and fact for the Settlement Class.
- 8 c. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representatives
9 (defined herein) are typical of the claims of the Settlement Class that they
10 represent.
- 11 d. Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and
12 adequately protect and represent the interests of all members of the
13 Settlement Class. The interests of the Class Representatives are not
14 antagonistic to those of the Settlement Class. The Class Representatives are
15 represented by counsel who are experienced and competent in the
16 prosecution of complex class action litigation.

17 3. The Court further finds that the requirements of Fed. R. Civ. P. 23(b)(3) are
18 satisfied, as follows:

- 19 a. Questions of law and fact common to the members of the Settlement Class
20 predominate over questions that may affect only individual members; and
- 21 b. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this controversy.

23 4. The Court appoints Plaintiffs Vicuna, Kyle, and Eckstein as class
24 representatives (“Class Representatives”) for the Settlement Class.

25 5. The Court preliminarily finds that the following counsel fairly and
26 adequately represent the interests of the Settlement Class and hereby appoints Roland
27

1 Tellis and Mark Pifko of Baron & Budd, P.C., and Nadeem Faruqi of Faruqi & Faruqi,
2 LLP, as counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23(g).

3 6. The settlement was the result of the parties' good-faith negotiations. The
4 settlement was entered into by experienced counsel and only after extensive arm's-length
5 negotiations. The Settlement Agreement is not the result of collusion.

6 7. The Settlement falls well within the range of reason. The Settlement has no
7 obvious deficiencies.

8 8. The Court finds that the Agreement and the settlement set forth therein are
9 preliminarily approved as fair, reasonable and adequate as to all potential Settlement
10 Class² members.

11 9. The Court approves, as to form and content (or as may be amended by the
12 Court), the Class Notice, Short Form Notice and Media Plan attached as Exhibits B, C
13 and D to the Agreement. The Court finds that the dissemination of the Class Notice, as
14 directed by this Order, constitutes the best notice practicable under the circumstances and
15 provides sufficient notice to all members of the Settlement Class. The contents of the
16 Class Notice and the manner of its dissemination satisfy the requirements of state and
17 federal due process. The Court authorizes the parties to make minor revisions to the
18 Class Notice as they may jointly deem necessary or appropriate, without necessity of
19 further Court action or approval.

20 10. The Rust/Kinsella Consulting firm is hereby appointed to administer the
21 notice procedure, process the claims, objections, and opt-outs.

22 11. A final approval hearing shall be held by this Court to consider and finally
23 determine:

- 24 a. Whether the Agreement should be finally approved as fair, reasonable, and
25 adequate;

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27 ² All capitalized and defined terms shall have the meaning ascribed to them in the Settlement
28 Agreement.

- b. Whether to approve Plaintiffs' Counsel's Fee and Expense Application, as provided in paragraph 3.1 of the Agreement; and
- c. The merits of any objections to the Agreement and the settlement set forth therein, or any of its terms.

The final approval hearing described in this paragraph may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class.

12. Any members of the Settlement Class who do not request exclusion, and who object to approval of the proposed settlement in compliance with the requirements of the Agreement, may appear at the final approval hearing in person or through counsel to show cause why the proposed settlement should not be approved as fair, reasonable, and adequate.

13. Any member of the Settlement Class who desires exclusion therefrom must mail, by the date set forth in the Class Notice, the information required in the Class Notice completed to the addresses set forth in the Class Notice. All persons who properly submit a completed request for exclusion shall not be Settlement Class Members and shall have no rights with respect to the settlement.

14. If the Agreement is finally approved, the Court shall enter a Settlement Order and Judgment approving the Agreement. Said Settlement Order and Judgment shall be fully binding with respect to all members of the Settlement Class who did not request exclusion by the date set in the Class Notice, in accordance with the terms of the Class Notice and the Agreement.

15. All discovery, pretrial deadlines and other pretrial proceedings in this Action are stayed and suspended until further order of this Court, except as otherwise agreed to by the parties or as may be necessary to implement the Agreement or this Order.

16. In the event that the proposed settlement as provided in the Agreement is not approved by the Court, or entry of a Settlement Order and Judgment as provided in the

1 Agreement does not occur for any reason, then the Agreement, all drafts, negotiations,
2 discussions, and documentation relating thereto, and all orders entered by the Court in
3 connection therewith shall become null and void. In such event, the Agreement and all
4 negotiations and proceedings relating thereto shall be withdrawn without prejudice to the
5 rights of any and all parties thereto, who shall be restored to their respective positions as
6 of the date of the execution of the Agreement.

7 17. The Agreement is not a concession or admission and shall not be used or
8 construed against Plaintiffs, Defendant or any of the Released Persons as an admission or
9 indication with respect to any claim of any fault or omission by Plaintiffs, Defendant or
10 any of the Released Persons. No act performed or document executed pursuant to or in
11 furtherance of the settlement: (i) is or may be deemed to be or may be used as an
12 admission of, or evidence of, the validity of any released claim or of any wrongdoing or
13 liability of Defendant; or (ii) is or may be deemed to be or may be used as an admission
14 of, or evidence of, any fault or omission of Defendant in any civil, criminal or
15 administrative proceeding in any court, administrative agency or other
16 tribunal. Nothing in this order shall be relied upon, cited as, constitute evidence of, or
17 constitute an admission that class or collective action certification is or may be
18 appropriate in any other action.

19 18. The dates of performance of this order are as follows:

- 20 a. The Class Notices shall be disseminated in accordance with the provisions of
21 Section IV of the Agreement. The parties shall use their best efforts to
22 complete such dissemination by September 27, 2013.
- 23 b. Requests for exclusion must be received by November 27, 2013.
- 24 c. Online submissions of Claim Forms must be completed, and mailed Claim
25 Forms must be postmarked, no later than November 27, 2013.
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- 1 d. Objections to the settlement must be postmarked no later than November 27,
2 2013.
- 3 e. Plaintiffs' Counsel shall prepare and file with the Court a joint list of class
4 members who have filed timely requests for exclusion by December 4, 2013.
- 5 f. Plaintiffs' Counsel shall file and serve papers in support of final approval of
6 the Settlement, responding to any objections or motion to intervene, and
7 requesting attorneys' fees, costs and expenses by October 28, 2013.
- 8 g. Defendant shall file papers, if any, in support of final approval of the
9 settlement and responding to any objections or motions to intervene by
10 November 11, 2013.
- 11 h. The final approval hearing shall be held on December 11, 2013, at 9:00 a.m.
- 12 19. The Court retains jurisdiction to consider all further applications arising out
13 of the proposed settlement.

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15 IT IS SO ORDERED.

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17 DATED: July 30, 2013

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19 Hon. Phyllis J. Hamilton
20 United States District Judge
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